



The State Bar of California

AGENDA ITEM

JULY 10 – May 17, 2019, Open Session Minutes

Open Session Minutes
Regular Meeting of the Board of Trustees

State Bar of California
180 Howard Street
Board Room, 4th Floor
San Francisco, California

Friday, May 17, 2019
9:00 a.m.

Time meeting commenced: 9:05 a.m. (Open Session commenced at 9:48 a.m. after Closed Session.)

Time meeting adjourned: 12:37 p.m.

Chair: Jason Lee

Secretary: Sarah Cohen

Members present: Mark Broughton, Hailyn Chen, Juan De La Cruz, Ruben Duran, Renee LaBran, Debbie Manning, Joanna Mendoza, Joshua Perttula, Brandon Stallings, Alan Steinbrecher

Members joined in progress: Sean SeLeague

Members absent: Sonia Delen

Public Comment: See summary below.

Salena Copeland: Ms. Copeland, Executive Director of the Legal Aid Association of California, expressed support for the fee scaling recommendation (Item #703).

10 Minutes

March 15, 2019 - Open Session Minutes – Adopted

30 Chair's Report – *oral report*

30-1 Board of Trustees Committee and Liaison Assignments

RESOLVED, that the Board of Trustees ratifies the attached Committee and Liaison Assignments for the 2018-2019 Board year.

Moved by Stallings, Seconded by Duran.

Substitution of the Roll Call.

Motion passes.

40 Staff Reports

41 Executive Director

1. Report from Executive Director - *informational*

50 Consent Agenda – Collectively Deemed Approved by Unanimous Consent.

50-1 Approval of Specified Contracts Pursuant to Business and Professions Code Section 6008.6

1. For Bar Examination Testing, Crown Plaza San Francisco Airport
2. For Program Management Consulting Services, Brian Richart
3. For Online Legal Education Design & Development, Infopro Learning, Inc.

RESOLVED, that the Board of Trustees approve execution of the contracts listed herein.

50-2 Report of Action Taken by Programs Committee Regarding Bank Grants

Updated 2017-2022 Strategic Plan Rev. 2: 4.a. – *informational*

50-3 Report of Action Taken by the Audit Committee on Behalf of the Board of Trustees: Receive and Order Filed the Audited Financial Statement for Year Ending 2018

It is recommended that the Board of Trustees affirm the filing of the State Bar's audited statements and related auditor's reports for the year ended December 31, 2018 with the State Legislature and the Supreme Court. It is further recommended that the Board authorize publication of the Statement of Expenditures of Mandatory Fees for the year ended December 31, 2018 when the 2019 annual billing statements are mailed to licensees by posting the statement and related auditor's report on the State Bar website.

WHEREAS, the Board's Audit Committee Chair and Co-Chair are authorized to review the draft audited statements and direct staff to submit them to the Legislature and Supreme Court on behalf of the Board of Trustees;

AND WHEREAS, on April 25, 2019, the Board Audit Committee Chair and Co-Chair received the draft financial statements and directed staff on April 29, 2019 to file the audited statements for year ended December 31, 2018, with the Legislature and Supreme Court; it is hereby

RESOLVED, that the Board of Trustees hereby affirms the action taken by the Audit Committee Chair and Co-Chair, on behalf of the Board; and it is

FURTHER RESOLVED, that upon the recommendation of the Audit Committee, the Board hereby receives the Annual Audited Financial Statements and the Statement of Expenditures of Mandatory Fees for the year ended December 31, 2018, and the accompanying independent auditor's reports, copies of which can be found on the website under reports; and it is

FURTHER RESOLVED, that when the billing of the 2020 license fees is mailed to licensees of the State Bar, staff is directed to post the Statement of Expenditures of Mandatory Fees for the year ended December 31, 2018 on the State Bar's website.

50-4 Form 700 Reporting Requirements for Rule 2201 Administrator and Special Deputy Trial Counsel: Request for Approval

RESOLVED, that the Board of Trustees revise the Special Deputy Trial Counsel Administrator and Special Deputy Trial Counsel disclosure categories adopted on March 15, 2019 and require the Special Deputy Trial Counsel Administrator and Special Deputy Trial Counsel to be subject only to disclosure category 13 of the Conflict of Interest Code for Designated Employees of the State Bar of California, and that the Special Deputy Trial Counsel Administrator and Special Deputy Trial Counsel make disclosures pursuant to category 13 as if their positions were specifically enumerated in Business and Professions Code section 6038, effective May 17, 2019.

50-5 Receipt and Filing of 2018 Annual Legal Services Trust Fund Program Report Pursuant to Business and Professions Code Sections 6145 and 6222

RESOLVED, that the Board of Trustees receive and file the 2018 Annual Legal Services Trust Fund Program Report.

54-111 American Bar Association (ABA) House of Delegates, Annual Appointment of Members

Updated 2017-2022 Strategic Plan Rev. 2: 1.b.

RESOLVED, that the Board Executive Committee approve the recommendation of the Appointments Liaisons, and the Board of Trustees appoint the following persons to the ABA House of Delegates for the associated term:

- Esther Lin, for a full two-year term, and
- Michelle Philo, for half a term or, one year.

54-112 Judicial Council, Annual Appointment of Members

RESOLVED, that the Board of Trustees appoint Maxwell V. Pritt to the Judicial Council, as one of the four State Bar members, for a three-year term to commence on September 15, 2019, and to expire on September 14, 2022, or until further order of the Board, whichever occurs earlier.

54-121 Revisions to Sample Fee Agreement Forms - Return from Public Comment and Request for Approval

RESOLVED, that the Board of Trustees, following the publication for a 45-day public comment period and in consideration of the comments received, and upon the recommendation of the Committee on Mandatory Fee Arbitration, hereby approves the publication of the revised Sample Fee Agreement forms, attached hereto in Attachment A - C.

54-122 Proposed Changes to State Bar Rules 5.4, 5.9, 5.10, 5.40 (Confidentiality) - Return from Public Comment and Request for Approval

RESOLVED, that the Board of Trustees approve the proposed changes to Rules 5.4, 5.40, 5.9 and 5.10, Rules of Procedure of the State Bar; and it is

FURTHER RESOLVED, that the changes to Rules 5.4, 5.40, 5.9 and 5.10, Rules of Procedure of the State Bar will be effective July 1, 2019.

54-123 Amendments to Standards 2.2, 2.5, 2.6, 2.13, 2.15, 2.21 (Standards for Attorney Sanctions for Professional Misconduct) - Return from Public Comment and Request for Approval

RESOLVED, that the Board of Trustees approve the amendments to the Standards for Attorney Sanctions for Professional Misconduct as set forth in Attachment A; and it is

FURTHER RESOLVED, that the amendments to the Standards for Attorney Sanctions for Professional Misconduct is effective immediately and will apply to all pending and future cases.

54-131 Annual Recommendation to the Supreme Court of California for Suspension of Licensees Delinquent in Payment of License Fees, Penalties or Costs

RESOLVED, that the Board of Trustees forward to the Supreme Court of California the names of those licensees to be suspended from the practice of law in California for failing to pay State Bar fees, penalties or costs on or before July 1, 2019, and hereby:

(a) finds that State Bar staff performed the ministerial functions for determining that each person who is to be recommended to the Supreme Court of California for suspension due to nonpayment of fees is licensed by The State Bar of California;

(b) concludes that State Bar staff determined that each such person failed to fully pay fees, penalties and/or costs as established pursuant to the provision of sections 6086.10, 6140, 6140.5(c), 6140.55, 6140.6, 6140.7, 6140.9 and 6141 of the Business and Professions Code;

(c) ascertains that State Bar staff have sent to each such person, at his or her address of record with the State Bar of California, two months' written notice of his or her delinquency which included notice of section 6143 of the Business and Professions Code;

(d) and recommends to the Supreme Court of California that each such person's State Bar license be suspended, which would suspend them from the practice of law in the State of California, effective July 2, 2019, until such time as he or she may be reinstated, upon the payment of the delinquent fees, penalties or costs and of such additional fees, penalties or costs as may have accrued at the time of such payment; and it is

FURTHER RESOLVED, that for the purpose of withdrawing the foregoing recommendation for suspension in particular cases, State Bar staff is authorized and directed to notify the Clerk of the Supreme Court of California of the name of any licensee of the State Bar who by proper remittance and prior to the effective date of the Supreme Court of California order of suspension based hereon, pays to the State Bar fees, penalties or costs in the amount in which he or she is delinquent; and to notify the Clerk of the Supreme Court of California of the consequent withdrawal of the Board of Trustees' recommendation for suspension; and it is

FURTHER RESOLVED, that for the purpose of modifying the recommendation to the Supreme Court of California for suspension for nonpayment of fees, penalties or costs, State Bar staff is authorized and directed to change the data as to status or the amounts

of delinquency of any licensee and to notify the Clerk of the Supreme Court of California accordingly of the consequent modification of the Board of Trustees' recommendation for suspension.

54-132 Annual Recommendation Regarding Licensees Not in Compliance with Minimum Continuing Legal Education (MCLE) Requirements

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board hereby authorizes that those attorneys in MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirements by July 1, 2019, be enrolled as inactive and placed on "Not Eligible to Practice" status, effective July 2, 2019; and it is

FURTHER RESOLVED, that the Board hereby authorizes staff to remove individual attorneys from inactive status once they have provided proof of compliance and paid all noncompliance fees.

54-133 Proposed Changes to State Bar Rules to Accommodate Minimum Continuing Legal Education (MCLE) Provider Course Upload Program - Return from Public Comment and Request for Approval

Updated 2017-2022 Strategic Plan Rev. 2: 2.c.

RESOLVED, that following the 60-day public comment period, the Board of Trustees hereby adopts the amendments to MCLE Attorney and Provider rules as set forth in Attachments A and B; and it is

FURTHER RESOLVED, that the amendments to the rules be effective on December 1, 2020.

54-134 Pilot Roll-out of Remote Proctoring for June First Year Law Students' Examination and July Bar Examination

RESOLVED, that the Board of Trustees approve the piloting of remote (online) proctoring for **as early as** the June 2019 First Year Law Students' Examination and the July 2019 California Bar Examination; and direct staff to take the necessary actions to implement that direction; and it is

FURTHER RESOLVED, that the Board of Trustees direct staff to report back to the Programs Committee after **each pilot** ~~the June 2019 First Year Law Students' Examination and after the July 2019 California Bar Exam~~ on the use of online proctoring for each examination.

[Revisions marked in red and strikethrough reflect changes to resolution made by Programs Committee.]

54-141 Q1 Financial Statement Report, Investment Report and Client Security Fund Report

RESOLVED, that the Board of Trustees approve the 2019 1st Quarter Financial Report in the form this day before the Board, for the three months ended March 31, 2019, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

54-142 Licensee Requests for Adjustment of Fees, Penalties and Charges

RESOLVED, that the Board of Trustees approve the fee adjustments for the State Bar licensees as presented this day before the Board, and on file in the San Francisco office of the State Bar.

54-143 Enterprise Resource Planning System - Budget Amendment, Request for Approval of Change Order and New Contract

1. For Oracle Fusion implementation services, with Sierra-Cedar
2. For data conversion and integration services, with Solution Boost

RESOLVED, that the Finance and Planning Committee and the Board of Trustees approve an amendment to the 2019 Budget, to increase budgeted expenses of the ERP System by \$305,000, as described herein; and it is

FURTHER RESOLVED, that the Finance and Planning Committee and the Board of Trustees approve a contract amendment with Sierra-Cedar for \$64,000, as described herein; and it is

FURTHER RESOLVED, that the Finance and Planning Committee and the Board of Trustees approve a contract with Solution Boost for \$234,000, as described herein.

54-181 Q1 Board and Management Travel Expenses

RESOLVED, that the Board of Trustees approve the first quarter of 2019 Board and Management Travel Expenses in the form this day before the Board, for the three months ending March 31, 2019, as certified by the Chief Financial Officer, and on file with the San Francisco office of the State Bar.

100 Reports of Board Committees

110 Board Executive Committee

113 Approval and Ratification of Updates to Board Book (DaSilva) - *withdrawn*

700 Miscellaneous

701 Appendix I Review: (1) Implementation of Recommendations Regarding Lawyer Assistance Program; (2) Proposed Change to State Bar Rules Affecting the Committee of Bar Examiners, the California Board of Legal Specialization, the Committee on Mandatory Fee Arbitration, and the Client Security Fund Commission – Return from Public Comment and Request for Approval; and (3) Re-Approval of Rules Permitting Accreditation of Online Law Schools (Hershkowitz) (20 mins.)

Updated 2017-2022 Strategic Plan Rev. 2: 1.c.

Presenter: *Donna Hershkowitz, Chief of Programs*

RESOLVED, that the Board of Trustees supports the “lift out” option for the “voluntary” Lawyer Assistance Program, with the responsibility for the program transferring to the California Lawyers Association. The Board directs staff to work with CLA and the Legislature to effectuate this change; and it is

FURTHER RESOLVED, that, following the 45-day public comment period, the Board of Trustees hereby approves and adopts proposed amendments to Rules of the State Bar regarding the operation of the Committee of Bar Examiners and the Office of Admissions, shown in mark-up text in Attachment C and summarized above; and it is

FURTHER RESOLVED, that, following the 45-day public comment period, the Board of Trustees hereby approves and adopts proposed amendments to Rules of the State Bar regarding the operation of the California Board of Specialization, shown in mark-up text in Attachment E and summarized above; and it is

FURTHER RESOLVED, that, following the 45-day public comment period, the Board of Trustees hereby approves and adopts proposed amendments to Rules of the State Bar regarding the operation of the Committee on Mandatory Fee Arbitration, shown in mark-up text in Attachment G and summarized above; and it is

FURTHER RESOLVED, that, following the 45-day public comment period, the Board of Trustees hereby approves and adopts proposed amendments to Rules of the State Bar regarding the operation of the Client Security Fund Commission, shown in mark-up text in Attachment H and summarized above; and it is

FURTHER RESOLVED, that the Board of Trustees hereby confirms its previous approval and adoption of proposed amendments to the Rules of the State Bar and Guidelines for

Accredited Law Schools creating a path to accreditation of online J.D. programs, shown in mark-up text in Attachments J and K.

Moved by Mendoza, Seconded by Stallings.

Substitution of the Roll Call.

Motion passes.

702 Receipt of 2019 Biannual State Audit Report and Impact on State Bar 2020 Funding Needs (Wilson/Adams) (20 mins.)

Updated 2017-2022 Strategic Plan Rev. 2: 3.I. – *informational*

Presenters: *Leah Wilson, Executive Director*
 John Adams, Chief Financial Officer

703 Fee Scaling Options for Implementation of State Bar Fee Increase (Adams/Katz) (30 mins.)

Presenters: *John Adams, Chief Financial Officer*
 Linda Katz, Principal Program Analyst, Office of Research and Institutional Accountability

RESOLVED, that the Board of Trustees hereby authorizes staff to incorporate the approved scaling model into the fee increase methodology and related advocacy for the fee increase request to the Legislature; **and it is**

FURTHER RESOLVED, that the Board of Trustees delegate authority to the Board of Trustees Chair and Vice Chair to work with staff to finalize.

704 2020 Governance in the Public Interest Task Force Planning – *informational*

Presenter: *Chair Jason Lee*

[This item was taken out of order, between #702 and #703.]

Meeting Adjourned.